

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

VITESSE SEMICONDUCTOR CORPORATION, :
et al., :

Defendants. :

Case No. 10-cv-9239 (JSR)

ECF Case

**RESPONSE OF THE
SECURITIES AND EXCHANGE
COMMISSION TO THE
MOTION OF THE UNITED
STATES ATTORNEY TO
INTERVENE AND FOR A
LIMITED STAY**

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PLAINTIFF SECURITIES AND EXCHANGE COMMISSION (“SEC”) submits this memorandum of law in response to the motion of the United States Attorney for the Southern District of New York (the “USAO”) to intervene and for a limited stay. For the reasons set forth below, the SEC does not oppose the motion.

The USAO has filed a motion to stay the trial and four depositions in this action, citing potential “severe prejudice” to the parallel criminal prosecution. Mem. in Support of Mot. at 2 [Docket 74]. The USAO has identified the risk of inconsistent verdicts, the potential burden on witnesses, and the Fifth Amendment concerns of the defendants as reasons for a stay of the civil trial. *Id.* at 15-16. The USAO believes its criminal prosecution would be impeded if the civil case proceeds to trial in advance of the criminal case. *Id.* at 10.

The SEC recognizes the wisdom of the USAO’s position, and therefore does not oppose the motion. The USAO states it is not seeking a blanket stay of this entire matter, but instead a stay carefully crafted to protect particularized criminal law enforcement interests. *See SEC v. Oakford*

Corp., 181 F.R.D. 269, 270 (S.D.N.Y. 1998) (inviting the U.S. Attorney “to apply for particularized protective orders if any aspect of the civil discovery threatened the integrity of the criminal case”); *SEC v. Saad*, 229 F.R.D. 90, 91 (S.D.N.Y. 2005) (although the court denied a motion by the U.S. Attorney seeking a “general stay,” the court was persuaded “to postpone until after the completion of the criminal trial . . . the civil depositions of the six defendants, two of whom are defendants in the criminal case and the other four of whom are the Government’s chief witnesses in the criminal case”).

Despite the pendency of related criminal charges, the SEC has moved forward with diligence in this matter from the outset. The SEC has produced over 6.7 million pages of documents to the defendants in discovery, and the parties have conducted, or will soon conduct, over twenty depositions. The parties are close to completing discovery and will be ready to begin pretrial motions practice in June.

In short, the SEC has moved expeditiously and is prepared to proceed however this Court directs in order to bring this matter to an appropriate resolution. *Compare Oakford Corp.*, 181 F.R.D. at 273 (criticizing the “use [of] the federal courts as a forum for filing serious civil accusations that one has no intention of pursuing until a parallel criminal case is completed”). The case will be “trial ready” on July 13, 2011 – as the Court directed in its initial scheduling order – and the SEC will be prepared at that time to move forward to trial and prove its charges on any date the Court sets.

Respectfully submitted,

s/ Terence Healy
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